

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 710 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1-5 No

JETUNBIBI WD/O DECD.

MAHMADBHAI GULABBHAI KANSARA

Versus

SHAHMAHMED NOORMAHMED

Appearance:

MR SURESH M SHAH for Petitioners

MR MB GANDHI for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 31/08/98

ORAL JUDGEMENT

Heard Mr. S.M. Shah, learned counsel, for the petitioner and Mr. M.B. Gandhi, learned counsel for the respondent caveator.

2. This revision under Section 29(2) of the Bombay Rent Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Bombay Rent Act') has been filed against the judgement dated 12.3.1998 passed by the Appellate Bench of Small Causes Court at Ahmedabad confirming the decree for eviction passed by the learned Small Causes Court dated 23.8.1996 in H.R.P. Suit No. 1730/81.

3. M/s. Shahmahmed Noormahmed, a partnership firm, initially filed the suit in the year 1981 against

original defendant Mahmedbhai Gulabbhai for eviction from the suit premises. During the pendency of suit the original defendant Mahmedbhai Gulabbhai died and therefore his heirs, namely, widow Jetunbibi and three sons viz. Mustak Ahmedbhai Kansara, Jalaluddin Mahmedbhai Kansara and minor Jamaluddin were brought on record as the tenancy transmitted to them. Noorahmed Noormahmed was added as plaintiff No. 2 by way of amendment in the suit in the year 1986. A plea was raised by the defendant that the suit was barred by provisions of Section 69 of the Partnership Act. A specific issue in this regard as issue No. 6E was framed. The registration of the firm was produced at Exh. 57. It was however contended on behalf of the defendants that the name of plaintiff No. 2 does not find place in the registration entry of the partnership firm. The court examined this aspect in great detail and held that plaintiff No. 2 was co-owner prior to the date of filing of the suit and his rights in the property was declared in the year 1978 i.e. much prior to the filing of the suit decreed by the City Civil Court. Thus, the plaintiff No. 2 was already co-owner of the property who had right to file this suit. Secondly the amendment was carried out in the year 1986 by which the plaintiff No. 2 was added as a party and as such the plaintiff No. 2 is entitled to proceed with the suit. The court also held that Section 69 of the Partnership Act does not come in the way of the plaintiff No. 1 as right to sue has arisen out of the statute and not out of contract. On appreciation of evidence the court arrived at the conclusion that the defendant has acquired suitable residence and as such he is liable to be evicted under the ground mentioned in 13(1)(l). The court also found that the suit premises have not been used for residential purpose for a continuous period of six months immediately preceding the date of the suit and as such was entitled for eviction on the ground under Section 13(1)(k). All the findings have been confirmed by the appellate Bench of the Small Causes Court at Ahmedabad.

4. It is contended by Mr. S.M. Shah, learned counsel for the petitioner that the decree passed by both the courts are vitiated as the suit itself was not maintainable in view of the provisions of Section 69 of the Partnership Act. It is urged that whatever right may be of the plaintiff No. 2 Noorahmed Noormahmed but he could not have been added as plaintiff No. 2. The learned counsel has reiterated the contentions raised before both the courts below. There is no substance in any of the contentions including the contention of maintainability of writ, in view of Section 69 as the plaintiff has been rightly found to be the co-owner of

the property.

5. It is also contended by learned counsel that during the pendency of the appeal Jetunbibi, widow of Mahmedbhai Gulabbhai Kansara, original tenant died and therefore in view of Full Bench decision of this court in the case of BABUBHAI VS. SHAH BHARATKUMAR reported in 21 GLR 103 an investigation is required to be made with respect to all the transactions. There is no substance in this contention. On the death of Mahmedbhai Gulabbhai, widow Jetunbibi and three sons were brought on record during trial. It is of course true that Jetunbibi died during the pendency of the appeal. The petitioner Nos. 1/2,1/ 3 and 1/4 were already on record. This aspect has been considered by the appellate court in para 9 of the judgement. A separate Civil Application has also been filed being Civil Application No. 4153 of 1998 seeking direction to declare the transmission of tenancy from deceased Jetunbibi in favour of the applicant No. 1 i.e. Jamaluddin. For the same reasons there is no substance in the said Civil Application. It may also be stated that if Jamaluddin was interested with the tenancy as transmitted in his favour, he could have made an application before the appellate court. He cannot take advantage of his own wrong. This is nothing but somehow to delay the proceedings.

In view of the aforesaid, I am satisfied that the decree passed by both the courts below are in accordance with law and does not call for interference by this court in revisional jurisdiction. The revision application is rejected summarily.

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